Cultural Resources Interest Group Response to
Preliminary Draft Rule Proposals
Revised Draft Proposed WAC 197-11 Revisions

October 9, 2012

Thank you for the opportunity to participate in this process and to provide the following comments. We recognize that the timeline for this revision has been severely truncated, and appreciate all the work put into this latest version by both the advisory council members and the DOE staff. We are concerned, however, that the quick turnaround on comments requested by DOE has not allowed us to have any meaningful consultation with the larger cultural resource constituency. These comments, therefore, constitute the thinking of only the cultural resource representatives on the advisory council. We look forward to more thoroughly addressing cultural resource issues in the 2013 process.

Overall, the proposed changes in the latest version are an improvement over the prior Draft Proposal C, but still fall short of our expectations. In particular, adding the notice provisions (ii) and (iii) acknowledge the acute concerns about losing the potential to notify advocates of impending projects. Notification, as you know, is particularly important to cultural resource advocates because these resources are not mandated for pro-active identification or planning in the state's Growth Management Act (GMA) or Shoreline Management Act (SMA), and SEPA remains a primary vehicle for knowing about and commenting on proposed projects that could affect cultural resources. We remained concerned that the proposal violates the assurances in SB 6406 that "reform will not reduce protection of the natural and built environment".

With regard to the proposed increased thresholds found in Table 1, we reiterate our October 4, 2012 comments:

> In terms of the proposed increases to the optional maximum thresholds for certain minor construction, we oppose them not on the basis that they are too permissive but on the basis that such increases are not accompanied by specific findings related to cultural resources. The issue is not the size of the hole in the ground but the location of the hole. Basing thresholds on variables such as units of housing and square footage is not appropriate to cultural resource concerns.

Some of our concerns might be ameliorated through the process outlined in (i) that jurisdictions must undertake to raise threshold levels. However, the language around "requirements for environmental analysis, protection and mitigation for impacts to elements of the environment" remains vague as it pertains to cultural resources. We point out that WAC 197-11-444 includes item 2.b.vi - "historic and cultural preservation", as you are undoubtedly aware . We insist that DOE require cultural resources be addressed as part of this required documentation.

That section further reads, “These can be addressed in specific adopted development regulations, comprehensive plans and applicable state and federal regulations.” We would be very pleased if jurisdictions included cultural resources within their comprehensive plans - but this is not required, or if they adopted development regulations that included pro-active strategies to identify and protect cultural resources. But the adequacy of development regulations pertaining to cultural resources is not defined. Without clear understanding of what adequacy means, we fear jurisdictions will default to the “applicable state and federal regulations” standard, which now addresses the treatment of cultural resources discovered after the fact (RCW 27.44 and 27.53), and results in no real improvement in the present situation.

We strongly recommend that DOE consult with DAHP to determine what constitutes acceptable approaches within development regulations so that this issue can be resolved for the benefit of the jurisdictions seeking higher thresholds. We maintain that the types of cultural resources “findings” necessary for a project to be SEPA-exempt should, at a minimum, include the following:

Exempt for archaeology if *any*:
1) Prior negative survey on file.
2) No ground disturbance proposed.
3) Project in 100% culturally-sterile fill.

Exempt for built environment if *both*:
1) Less than 45 years old; *and*
2) Not eligible for or listed in any historic register or historic survey.

Exempt for archaeology *and* built environment if:
1) Cultural resource management plan is incorporated into Comp Plan, *or*
1) Local ordinance or development regulations address pre-project review and standard inadvertent discovery language (SIDL), *and*
2) Data-sharing agreement is in place.

For *all* projects, exempt or not:
Include SIDL on all related permits (compliance with RCW 27.53, 27.44)

Finally, if in fact agreement can be reached on what constitutes adequate protection for cultural resources in comprehensive plans, ordinances and development regulations, then our concerns regarding the proposed changes in 197-11-315 - Environmental Checklist could be alleviated. We recommend that the checklist includes an electronic link to DAHP and its cultural resource database.